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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/801,965   | 03/15/2004  | Roland Benitsch      | ZTP01P14036           | 2550             |
| 24131  | 7590        | 08/26/2004           | EXAMINER              |                  |
| LERNER AND GREENBERG, PA<br>P O BOX 2480<br>HOLLYWOOD, FL 33022-2480 |             |                      | HANSEN, JAMES ORVILLE |                  |
|  |             |                      | ART UNIT              | PAPER NUMBER     |
|  |             |                      | 3637                  |                  |
| DATE MAILED: 08/26/2004  |             |                      |                       |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/801,965

Applicant(s)

BENITSCH ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4 & 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese publication 11-351737 [known hereafter as JP'737]. JP'737 (figures 1-17) teaches of a drawer (12a) that is disposed within a cooled interior space of a an inherent housing of a refrigerator [shelf is used in combination with a refrigerator], the drawer being disposed in the interior space for storing bottles (fig. 3 for example), the drawer having a frame with two opposite sides (fig. 1), and the drawer having a plurality of rods (15's for example) releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another. The rods having an upwardly directed rounding/circular cross section (fig. 4 for example). The drawer able to store bottles in either a horizontal or reclined positions (see figs.).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP'737. JP'737 teaches applicant's inventive claimed structure as disclosed above, but does

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not state the diameter of the rods. However, it would have been obvious to a person possessing ordinary skill in the art to vary the diameter of the rods depending upon the intended use or personal preference, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

5. Claims 1, 6-9 & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett [U.S. Patent No. 5,330,261] in view of McConnell [U.S. Patent No. 4,101,233]. Bennett (figures 1-10) teaches of a refrigerator (50), the refrigerator including a housing having a cooled interior space (54); and a plurality of drawers (integrated with rack structure (56)). Bennett teaches applicant's inventive claimed structure as disclosed above, but does not show a drawer formed out of a frame and including rods. McConnell (figures 1-12) is cited as an evidence reference to show that it was known to utilize a drawer for a storage rack, with the drawer being formed out of a frame having two opposite sides (left and right sides as depicted in fig. 1), and a plurality of rods (60) releasably mounted parallel to and spaced apart from one another between the two sides of the frame at selectable distances from one another. The frame having opposite side elements (70), with the rods being mounted to the elements by a plug-in connection (note fig. 6), the connection including a pin (50) formed of a an inherently flexible material and having one end (140) engaging in a drilled hole (76) in one of the elements and another end (116) engaging in a blind drilled hole (65) in one of the rods, the pin being oriented vertically, one of the elements having a projection (viewed as member 82) facing an opposite one of the elements for securing one end of each of the rods against lateral movement. The

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drawer able to store bottles in a horizontal position. Accordingly, it is viewed that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the drawer of Bennett so as to incorporate the features as outlined above and taught by McConnell because this arrangement would provide Bennett with the means to facilitate assembly of the drawer so as to expedite the installation of the assembly while catering to the personal preferences of the user's intended needs {spacing of the rods may be varied depending upon the intended use}.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett and McConnell and further in view of Kay [U.S. Patent No. 5,322,173]. The prior art teaches applicant's inventive claimed structure as disclosed above, but does not show the rods being formed of wood. Kay (figures 1-7) is cited as an evidence reference to show that it was known to utilize a rod made out of wood, wherein a plurality of the rods are used to support an item(s). Accordingly, it is viewed that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the material of the rods utilized by Bennett so as to incorporate the wood material as taught by Kay since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of personal preference in view of the fact that the intended needs of the user or intended use of the structure may vary over time.

### ***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Highsmith et al., Elliott, Whiten et al., and German publication 3247604 describe rack-shelving systems. Feurstein and Kojima describe refrigerator structures with rod supporting means.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 703-305-7414. The examiner can normally be reached on Mon.-Fri. 8-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
August 24, 2004